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1 to the E-Rate Program. After having cooperated in the investigation and seeking a mutually
2 agreeable settlement of all claims related thereto, the defendant has entered into a Plea
3 Agreement with the United States in which the defendant pleaded guilty to a two-count felony
4 information charging the defendant with mail fraud and aiding and abetting in violation of 18
5 U.S.C. § 1341 and 2, and conspiracy to suppress and eliminate competition in violation of the
6 Sherman Antitrust Act, 15 U.S.C. § 1, by conspiring with others to frustrate the public bidding
7 process under the E-Rate Program and submitting false and misleading information to the
8 Schools and Library Division of USAC ("LD") in order to receive funding for products and
9 services not authorized under the E-Rate Program. To address the issues raised in the Plea
10 Agreement concerning its conduct, and having determined that the following conditions will
11 constitute reasonable and necessary steps to avoid the re-occurrence of the conduct which was
12 the subject of the Plea Agreement, the defendant agrees, and the Court hereby imposes the
13 following as a special condition of probation for the entire three year term of probation. In so
14 doing, the Court is not in any way limiting the authority of any agency of the United States to
15 take any action permitted by law or regulation.

16 1. Within sixty (60) days of acceptance of the Plea Agreement by the Court, the
17 defendant shall formally adopt a comprehensive Anti-Fraud and Antitrust
18 Compliance Policy (the "Compliance Policy") and shall provide copies of said
19 policy to the Probation Officer, FCC Enforcement Bureau and the FCC-OIG. At
20 a minimum, the Compliance Policy will address the following:

- 21 a. Creating an internal structure requiring high level management oversight
22 of all government and public entity business;
- 23 b. Creating an internal system of monitoring and audits to include steps to be
24 taken if any employee suspects that any bid, proposal or other company
25 conduct is not in accordance with the company's Compliance Policy
26 and/or applicable law;
- 27 c. Ensuring that there are at least annual reports to the FCC Enforcement
28 Bureau and FCC-OIG of Compliance Policy activities;

- 1 d. Educating and training all responsible employees about their obligations,
2 including government procurement law, regulations and procedures;
3 criminal and civil penalties for mail fraud, wire fraud, false statements,
4 obstruction of justice, and false claims and other related conduct; and the
5 requirements for adherence to the antitrust laws; and
6 e. Ensuring that there are regular reports to the CEO and Board of Directors.
- 7 2. Within sixty (60) days of acceptance of the Plea Agreement by the Court, the
8 defendant shall designate an officer of the defendant to be the Compliance Officer
9 (the "Compliance Officer") responsible for the enforcement of the Anti-Fraud and
10 Antitrust Compliance Policy. This shall include:
- 11 a. Creating and overseeing internal policies and procedures to ensure that all
12 company activities involving government sponsored or funded programs
13 or any other business with any public entities is conducted in accordance
14 with applicable law.
- 15 b. Ensuring that either the Compliance Officer personally or someone under
16 his/her direct supervision is an experienced contract manager
17 knowledgeable about governmental laws and regulations relating to public
18 sector procurement;
- 19 c. Requiring the Compliance Officer and those under his/her direct
20 supervision to oversee the enforcement of the Anti-Fraud and Antitrust
21 Compliance Policy as it applies to all company activities involving
22 government sponsored or funded programs or any other business with any
23 public entities;
- 24 d. Creating and overseeing an ongoing mandatory education and training
25 program for all officers, directors, sales, technical staff and other
26 employees directly involved in the preparation of bid and related
27 contractual materials for any government sponsored or funded programs
28 or any other business with any public entities in order to apprise them of

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- all governmental laws and regulations relating to public sector procurement and the requirements of the Compliance Policy; and
- e. The Compliance Officer shall ensure and certify under penalty of perjury that all affected individuals have received such training on at least a yearly basis and shall provide the certification to the Probation Officer, FCC Enforcement Bureau and FCC-OIG.
- 3. The Compliance Officer shall be the central point of contact for (a) documenting and distributing E-Rate program requirements throughout the company; (b) monitoring changes in the E-Rate rules and regulations to ensure the documentation and distribution of such changes; (c) ensuring that all employees who are involved with the E-Rate program receive training; and (d) arranging monthly meetings with key company executives to ensure consistent implementation of the E-Rate rules and regulations across the company.
- 4. The Compliance Officer's salary and other compensation, as well as the salary and other compensation of any employees under the Compliance Officer's supervision, shall be independent of any contracts or other government sponsored or funded programs or other public entity business;
- 5. The Compliance Officer shall create and oversee an internal auditing program in which all public sector contracts shall be audited to ensure compliance with the Compliance Program to include that bids, prices and design specifications are appropriate and that there are no hidden terms, side agreements or other undisclosed arrangements, and that all bids and pricing have been done in accordance with all applicable laws and procedures.
- 6. The Compliance Officer shall create, oversee and promote an internal voicemail or email hotline system in which all employees are encouraged to report, on an anonymous basis, any believed violation of law by any officer or employee.

- 1 7. The Compliance Officer and the defendant's General Counsel shall be responsible
2 for monitoring the internal hotline system and undertaking all reasonable and
3 necessary investigations arising from any reported matter(s).
- 4 8. The General Counsel and the Compliance Officer shall, on at least a quarterly
5 basis, report to the defendant's CEO and Audit Committee as to the enforcement
6 of the Compliance Policy and the various measures called for herein including the
7 status of any anonymous complaints or reports received from any employees.
- 8 9. On at least an annual basis, the Compliance Officer shall make a report to the full
9 Board of Directors as to the status of the Compliance Policy and the various
10 measures called for herein.
- 11 10. On at least an annual basis, the Compliance Officer shall make a report to the
12 Probation Officer, FCC Enforcement Bureau and FCC-OIG as to the status of the
13 Compliance Policy and the various measures called for herein.
- 14 11. Within sixty (60) days of acceptance of the Plea Agreement by the Court:
 - 15 a. The Compliance Officer shall prepare and distribute a written training
16 program to be used in formal training of Inter-Tel employees involved in
17 the E-Rate Program, including employees involved in accounting,
18 finance, sales, marketing, and installations. Among other things, this
19 training program shall cover the following subject matters: the
20 application process, competitive bidding, eligible services, service
21 provider role and responsibilities, discounts, service substitutions and
22 equipment transfers, billing SLD for services, document retention
23 requirements, and risks of non-compliance. Within 120 days of
24 acceptance of the Plea Agreement by the court, all employees who are
25 involved in the E-Rate Program must certify their completion of the
26 training program. All future employees involved with the E-Rate
27 program shall receive such training and shall certify completion of the
28 training program within 14 days of the date on which such individuals

1 are appointed or hired to such positions. These employee certifications
2 must be collected and maintained by the Compliance Officer for a period
3 of 5 years.

- 4 b. The Compliance Officer shall establish an E-Rate Code of Conduct
5 ("Code"), which will conform to this Corporate Compliance Plan and
6 which shall be signed by all employees involved with the E-Rate
7 program. All subject employees shall reaffirm annually, in writing that
8 they have reviewed, fully understand, and will adhere to the Code.
- 9 c. The Compliance Officer shall inform all employees involved with the E-
10 Rate program that any violation of E-Rate Code shall be grounds for
11 disciplinary action to include warning, censure, reprimand, suspension,
12 loss of pay and firing depending on the severity of the violation and the
13 repetitive nature of the misconduct.

14 12. The Compliance Officer shall meet regularly (at least monthly) with key
15 executives in the following business units to ensure compliance with all
16 applicable internal company rules and regulations and all E-Rate or other
17 telecommunications program requirements: accounting, finance, installations (i.e.
18 service technicians), legal, marketing, and sales.

19 13. The Compliance Officer shall review all company bids in response to Form 471
20 Applications. For each bid, the Compliance Officer will certify that all E-Rate
21 rules and regulations were followed in preparing the bid and all related
22 contractual materials. Such certifications must be maintained by the Compliance
23 Officer for a period of 5 years.

24 14. The Compliance Officer shall collect Form 471 Applications from each customer
25 or prospective customer. The Compliance Officer or his/her designee shall
26 perform a reconciliation of each Form 471 Application to the company's
27 responsive bid and to the resulting contract or business agreement. The
28 Compliance Officer shall keep a copy of the resulting reconciliation worksheet for

1 each application and shall update it as necessary to show any exchanges,
2 substitutions, or cancellations. The Compliance Officer shall maintain these
3 reconciliation worksheets for a period of 5 years.

4 15. The company shall separate all E-Rate eligible and ineligible products and
5 services onto separate customer contracts per installation.

6 16. In addition to any applicable FCC regulation or program requirement, and as a
7 condition of any future participation in the E-Rate Program or other government
8 sponsored or funded telecommunications programs, the defendant agrees that the
9 FCC Enforcement Bureau and FCC-OIG, acting directly or through its agents,
10 may, on an annual basis, audit defendant's compliance with applicable laws and
11 regulations relating to the E-Rate or other government sponsored or funded
12 telecommunication programs to assure adherence to the terms and conditions of
13 those programs. Defendant shall bear all ordinary and reasonable costs of any
14 such audit(s).

15 17. On an at least annual basis, within 30 days after the close of defendant's fiscal
16 year, the defendant shall file a report signed under the penalty of perjury by the
17 CEO with the FCC Enforcement Bureau and FCC-OIG concerning the
18 defendant's compliance with the Compliance Policy. This report shall certify that
19 all required oversight, training and educational activities have been undertaken in
20 accordance with the requirements of the Compliance Policy. In the alternative,
21 the report shall detail any shortcomings in following the Compliance Policy and
22 the steps taken, and those that will be taken, to ensure compliance. This report
23 shall also include a detailed description of any violations that were found during
24 the applicable period, the steps taken to cure the violations and any subsequent
25 steps taken to ensure future compliance.

26 18. The defendant agrees that should it fail to provide the reports required herein on a
27 timely basis, it shall be responsible for liquidated damages to the United States in
28 the amount of \$25,000 per day until the report is received by the FCC

1 Enforcement Bureau and FCC-OIG. The FCC Enforcement Bureau and FCC-
2 OIG may require the defendant to provide additional information as necessary
3 concerning any incidents or other activities contained in the annual report. If the
4 defendant materially fails to provide such information within the time requested
5 or 10 days of such request, whichever is longer, the defendant agrees that it will
6 continue to be liable for liquidated damages in the amount of \$25,000 per day
7 until such information is provided to the satisfaction of the FCC Enforcement
8 Bureau and FCC-OIG.

9 19. If defendant is debarred by the FCC from further participation in the E-Rate
10 program, defendant shall remain subject to each of the above Special Conditions
11 of Probation with the exception of the external reporting requirements contained
12 in Paragraphs 1(c), 2(e), 10, 16-18.

13 20. These Special Conditions shall apply to the defendant and to any successors or
14 assigns for three years from the date of sentencing. Notwithstanding the above, if
15 the defendant is to be sold, or if all or substantially all of the defendant's assets are
16 to be sold, to an independent third party, then these Special Conditions will be
17 voidable following written notice as set forth below under the following
18 circumstances: a) The acquiring entity (or its shareholder(s)), or individual(s)
19 (collectively, the "Acquirer"), own in excess of 50% of the outstanding shares of
20 the defendant; b) Management decisions are made as part of the new corporate
21 structure which, by way of example and not by way of limitation, shall mean at a
22 minimum that at least 50% of the board of directors are appointed by the Acquirer
23 from individuals who have not previously been directors, officers or employees of
24 the defendant or its former shareholders. The new corporate structure must
25 provide for on-going internal review and consent by responsible corporate officers
26 of all business dealings with any public entity and publicly financed or mandated
27 program such as E-Rate. c) The Chief Executive Officer of the acquiring entity
28 certifies under penalty of perjury to the Court, with copies to the Probation

1 Officer and United States Attorney's Office, that the new entity has a fully
2 functioning Corporate Compliance Program that adequately addresses the internal
3 oversight functions required by these Special Conditions of Probation and
4 provides backup documentation describing the Corporate Compliance Program;
5 and d) Any reports required by these Special Conditions are up to date and any
6 liquidated damages due and owing under paragraph 18 have been paid in full.
7 The United States and Probation Department shall have up to 45 days from notice
8 of the proposed acquisition to evaluate the changed circumstances caused by the
9 acquisition. Unless there is an objection by the United States Attorney's Office or
10 Probation Officer, these Special Conditions shall terminate automatically at the
11 expiration of 45 days following the receipt of defendant's written notice, or sooner
12 if the United States so stipulates. If there is an objection, the defendant may
13 notice this matter for hearing before this Court. Notwithstanding the foregoing, if
14 the conditions set forth in clauses (a), (b), and (d) have been satisfied, but the
15 condition in clause (c) has not been satisfied, then, if the Acquirer certifies that it
16 has adopted a compliance program that satisfies the terms of these Special
17 Conditions (excluding any external reporting requirements), then these Special
18 Conditions shall continue to apply to the defendant and any successors or assigns
19 and will extend to the entire business operations of the acquiring entity with the
20 exception of the external reporting requirements contained in Paragraphs 1(c),
21 2(e), 10, and 16-18.

22 IT IS SO ORDERED.

23 Dated:

24 HONORABLE CHARLES B. BREYER
25 United States District Court Judge
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